SUPREME COURT OF THE UNITED STATES.

No. 224.

WILLIAM S GRANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.—No. 1882.

WILLIAM S. GRANT,
vs.
THE UNITED STATES } October term, 1863.

To the honorable the judges of the Court of Claims:

Your petitioner, William S. Grant, a loyal citizen of the United States, and resident of the State of Maine, respectfully states to the court:

First. That on the 5th day of March, 1860, T. W. Taliafero and William S. Grant, the petitioner, proposed to the Secretary of War to furnish to the United States all the supplies that might be needed until the 26th day of March, 1862, whether in the commissary or quartermaster's department, at all the military posts then or to be thereafter established in that portion of the Territory of Arizona lying south of 33° 36′ north latitude, and west 106° 35′ west longitude, at a compensation twelve per cent. less than paid for similar articles the previous year to other contractors delivering supplies within said limits, at such posts that might be established; said transportation to be estimated from the nearest established post: as will more fully appear by reference to a copy of said proposition, hereby made a part of this petition, and marked as "Exhibit A" herein.

Second. That after due consideration, the Secretary of War, in response to the said proposition, on the 9th day of March, 1860, made an order authorizing your petitioner and said T. W. Taliafero to furnish to the United States all the supplies that might be needed until the 26th day of March, 1862, whether in the commissary or quartermaster's department, at all the military posts established, or to be established, in that portion of the Territory of Arizona lying south of 33° 36′ north latitude, and west of 106° 35′ west longitude; and it was stipulated and provided in said order that your petitioner and the said T. W. Taliafero should receive for the supplies so furnished, a compensation, twelve per cent. less than the ruling prices paid by the United States the previous year to other persons who had delivered similar supplies at the posts and stations within the same limits, together with a reasonable allowance for transportation to any new posts which might be afterwards established; and it was

2 further provided that this additional allowance for transportation to the said new posts was to be estimated from the nearest post then existing within said limits; all of which will more fully appear by reference to a copy of said order of 9th of March, 1860, hereby made a part of this petition and marked as "Exhibit B" herein.

Third. That your petitioner and the said Taliafero accepted the terms thus offered them for the furnishing of said supplies, under and in conformity with said order of 9th March, 1860; and your petitioner immediately entered upon the execution of said contract, but the said Taliafero, being a resident of California and desiring to

relieve himself from said contract and the duties which it imposed, with the assent of the United States, on the 1st day of September, 1860, for a valuable consideration, assigned, transferred, and made over to your petitioner all his interest in or under said order in the furnishing said supplies to said posts established, or to be established within said limits, designated in said order of March the 9th, 1860: as will more fully appear by a copy of said transfer, hereby made a part of this petition and marked as "Exhibit C" herein.

Fourth. That, in pursuance of the arrangements and agreements thus made by your petitioner with the United States, and with the said Taliafero, your petitioner, on the 9th day of Sept., 1860, executed a written contract with Horace Randall, acting assistant commissary of subsistence, on behalf of the United States, by which your petitioner bound himself to furnish at the posts included within the terms of the order of 9th March, 1860, all the supplies of fresh beef, bacon-sides, and hams, flour, beans, candles and soap, which might be required at the rate of compensation stipulated in in the order of the War department, that is to say, twelve per cent. less than the ruling prices of the previous year; and the said contract was to continue and be in force until the 26th day of March, 1862: as will more fully appear by reference to a copy of said contract, hereby made a part of this petition and marked as "Exhibit D" herein, No. 2.

Fifth. That on the 20th day of September, 1860, your petitioner executed another contract with the United States, the same Horace Randall, representing the government as acting assistant quartermaster, under and by virtue of which contract your petitioner bound himself to deliver at the posts and stations included in the said order of 9th of March, 1860, all the supplies required for them and usually purchased in the Territory, appertaining to the quartermaster's department, to wit: forage, (including corn, hay, and topped fodder,) coal, lime, adobies, lumber, and wagon timber; and the United States bound themselves to pay for said articles the prices of the previous year, less twelve per cent., with the additional allowance for transportation as required in the said order: all of which will more fully appear by a reference to a copy of said contract, hereby made a part of this petition and marked as "Exhibit E" herein.

Sixth. That immediately after receiving and accepting the order of the war department, dated 9th March, 1860, your petitioner set about the business which it bound him to perform, by investing in the enterprise all his own capital, and making arrangements with the house of Pierce & Bacon, in Boston, for a large credit. Your petitioner further states that he removed to the Territory of Arizona and established his depot and agency at Tucson, that being a convenient distance between Forts Buchanan and Breckinridge, and gave bond and security for the fulfilment of his said contracts with the United States, a copy of which said bond, when obtained from the proper department, he asks to be made a part of this petition, marked as "Exhibit F" herein, and, if not obtained, that parol evidence be admitted of the fact.

Seventh. That in order to comply with the obligations imposed upon your petitioner, under and by virtue of said contracts, it became and was necessary for your petitioner to purchase in Boston and New York, a large amount of supplies for the use of the United States troops in Arizona, and also for the use of your petitioner, to aid and facilitate in the execution of said contracts; which said supplies were shipped to Port Lavaca, in Texas, to be transported from thence to Arizona by land; and the said petitioner avers that said purchases of said supplies were made and the same were ready for shipment to Lavaca on the 24th of September, 1860, of which the United States then and there had notice; and it was understood and agreed that said supplies, before shipment, were to be inspected upon the part of the United States, yet the United States failed and omitted to make said inspection from the said 24th day of September, 1860, to the 6th day of December, 1860, to the great injury of the petitioner, as hereinafter set forth.

Eighth. That in order to transport said supplies from Port Lavaca to Fort Buchanan and other points in Arizona, a distance, by land, of twelve hundred miles, it became and was necessary for your petitioner to purchase and have ready at Lavaca a large number of wagons, teams, teamsters, agents, and laborers, to wit: fifty-one wagons and teams, which said wagons and teams were provided at Lavaca on the 10th day of November, 1860, but, in consequence of said delay in the inspection of said supplies, the same did not arrive at Lavaca until the 10th of January, 1861; and by reason of said supplies not arriving until the middle of winter, it was impossible for said train to move but a short distance from Lavaca, in consequence of inclement winter weather and the want of forage for the teams, until spring, when, if said supplies had been promply inspected, they would have arrived in November at Lavaca, and been transported to their destination in Arizona prior to the 20th of April, 1861. Your petitioner avers that the cost of said supplies and other goods in Boston and New York, the freight and insurance to Lavaca, the cost of further supplies and purchases at Lavaca, the cost of the said wagons and teams, and the hire and subsistence of teamsters, agents, and laborers, so provided, amounted, up to the 20th of April, to a large sum of money, to wit: to the sum of ($84,370 14) eighty-four thousand three hundred and seventy dollars and fourteen cents, exclusive of transportation amounting to ($55,085 00) fifty-five thou-
4 sand and eighty-five dollars: as will more fully appear by a particular statement thereof, hereby made a part of this petition and marked as Exhibit (G) herein.

Ninth. That while said supplies were being transported from Lavaca, Texas, to Fort Buchanan and other points in Arizona, at a point in Texas fifty miles west of San Antonio, two hundred and fifty miles distant from Lavaca, and nine hundred and fifty miles distant from Buchanan, on the 20th of April, 1861, the said supplies, wagons and teams, and property, were captured and taken away from your petitioner, and wholly lost to him, by a party of armed rebels then in hostility to the United States, and which said wagons, and

teams, and property, connected with said train were worth, at the time and place of said capture, the sum of ($84,370 14) eighty-four thousand three hundred and seventy dollars and fourteen cents. And the said petitioner avers that said capture was caused by the delay in the inspection of said supplies, and by reason of the said supplies being destined for the use of the United States troops, and without any fault or negligence on the part of your petitioner; and in consideration of which capture and loss of the said supplies and property, the United States then and there undertook and promised to pay to the said petitioner the reasonable value of said supplies, wagons and teams, and property, at the time and place of said capture, which your petitioner avers was the sum of ($84,370 14) eighty-four thousand three hundred and seventy dollars and fourteen cents.

Tenth. That while your petitioner was in the due execution of his said contracts and actually engaged in the transportation of said supplies from Lavaca to Arizona, the United States, of its own wrong, and without any fault or negligence on the part of your petitioner, and without notice to him, and without his agreement or consent, on the 3d day of April, 1861, set aside, revoked, annulled and rescinded the said contracts of your petitioner: as will more fully appear by reference to a copy or the order of the Secretary of War, upon the recommendation of the Commissary General, rescinding said contract, hereby made a part of this petition and marked as Exhibit (H) herein.

And your petitioner avers, that by reason of said annulment of said contracts, he sustained actual damages to the amount of ($84,370 14) eighty-four thousand three hundred and seventy dollars and fourteen cents, in consideration of which, the United States then and there undertook and promised to pay the said petitioner such amount of damages as would repay the actual loss of your petitioner, and place him in the same pecuniary condition as before the annulment of said contracts, which said sum your petitioner avers amounts to the sum of ($84,370 14) eighty-four thousand three hundred and seventy dollars and fourteen cents.

Eleventh. That the United States, without any fault or negligence on the part of the petitioner, and while he was engaged in the due performance of said contracts, on the 3d day of April, 1861, unlawfully violated and rescinded the said contracts so executed with your petitioner, as will appear by reference to the order of rescission, set forth in the preceding paragraph, as Exhibit H, therein; and, by reason of said unlawful rescission, of said contracts, the United States became and were liable to pay your petitioner the actual damages sustained by him by the rescission of said contracts, amounting to the sum of ($84,370 14) eighty-four thousand three hundred and seventy dollars and fourteen cents; and the further sum of so much profit as the said petitioner would have made in the performance of said contracts, had he been permitted to perform them. Which said profit, your petitioner avers would have amounted to a large sum of money, to wit: the sum of ($200,000) two hundred thousand dollars.

Twelfth. That your petitioner had all his said supplies purchased and ready for inspection on the 24th day of September, 1860, of which the United States then and there had notice, as appears by letter of Pierce & Bacon, as Exhibit I; and under and by virtue of an order of the Secretary of War, dated the 18th day of September, 1860, a copy of which is already (hereafter) Exhibit D, No. 1, herein, it became and was the duty of the United States, then and there, to inspect said supplies, yet the said United States failed and neglected from the said 24th day of September, 1860, until the 6th day of December, 1860, to make said inspection of said supplies, as will appear by copy of same marked as Exhibit K; and by reason of said delay in the said inspection of said supplies, seventy yoke of the oxen perished by inclemency of the winter weather, and want of forage. The wagons, and teams, and property of your petitioner, and all the supplies aforesaid, were afterwards, on the 20th day of April, 1861, captured in the State of Texas, fifty miles west of San Antonio, by a party of armed rebels, levying war against the United States, which capture would not have taken place but for the delay aforesaid, and in consideration of the said damage, and loss accruing to your petitioner, from the cause aforesaid, the United States undertook and promised to pay your petitioner the actual value of the supplies, property, and wagons and teams at the time and place of capture, and the amount of freight which would have been due and owing on the transportation of said supplies to their destination, had your petitioner transported them, as he could and would have done but for the cause aforesaid, which amounts to the sum of ($84,370 14,) eighty-four thousand three hundred and seventy dollars and fourteen cents; the value of the supplies, property, wagons, and teams taken and captured, and the further sum of ($55,085 00) fifty-five thousand and eighty-five dollars, the amount of freight that would have been due and owing in the transportation and delivery of said supplies at Fort Buchanan, in Arizona, the place of destination, to which said supplies were being transported at the time of capture.

Thirteenth. Your petitioner avers that the rescission of the said contract on the 3d of April, 1861, was not authororized, excused, or justified by anything done or omitted by your petitioner, but was wholly and entirely wrongful and unjust, and that such rescission and violation of the contract by the United States, have deprived your petitioner of all the profits which he might and would have made by performing the said contract, to the damage of your petitioner, in the sum of ($200,000,) two hundred thousand dollars.

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Fourteenth. That said supplies having been purchased under contract with the United States, and for the use of the United States, and being transported from Boston and New York to Arizona, under contract with the United States, at a stipulated rate of compensation as set forth in said contracts, and the said supplies, and the wagons, and teams transporting them, being captured by a public enemy, without any fault or negligence on the part of the petitioner, the United States, under said contracts, are bound to pay your petitioner

the value of said property so captured; also, the contract price of said supplies at the place of destination, and the contract price for the transportation of the said supplies to the place of destination, the same as if no interruption to the voyage had taken place, which amounted to the sum of ($84,370 14,) eighty-four thousand three hundred and seventy dollars and fourteen cents, for said supplies and property, and the further sum of ($55,085 00,) fifty-five thousand and eighty-five dollars for the transportation thereof, making in all the sum of ($139,455 14) one hundred and thirty-nine thousand four hundred and fifty-five dollars and fourteen cents, due and owing to the said petitioner, under said contracts by the United States for the cause aforesaid.

Fifteenth. That while the said petitioner was engaged in the military service of the United States, in the transportation of supplies from Boston and New York to Arizona, under contract of hire with the United States, the wagons and teams of your petitioner, consisting of fifty wagons of the value of ($250) two hundred and fifty dollars each, and (235) two hundred and thirty-five yoke of oxen, of the value of ($47 50) forty-seven dollars and fifty cents each, were, in the State of Texas, on the 20th day of April, 1861, at a point fifty miles west of San Antonio, captured by an enemy, without any fault or negligence on the part of your petitioner, while the said wagons and teams were actually employed in the service of the United States. And your petitioner avers that the risk of capture to which said property was exposed was not agreed to be incurred by your petitioner. And your petitioner avers, that under the second section of the act of Congress, approved March the 3d, 1849, entitled "An act to provide for the payment of horses and other property lost or destroyed in the military service of the United States," the said United States are liable and bound to pay to your petitioner the sum of ($23,662 50) twenty-three thousand six hundred and sixty-two dollars and fifty cents, that being the value of said wagons and teams at the time they entered the military service of the United States, under contract of hire as aforesaid, in the transportation of military supplies for the use of the United States.

Sixteenth. That the said order of March 9th, 1860, was modified by an order of the Secretary of War, under date of July 9th, 1860, by which modification the supplies to be furnished by your petitioner were limited to the following articles, viz: bacon, beef, flour, beans, soap, candles, and hams; but said order of 9th July, 1860, so modifying the order of 9th March, 1860, cannot be exhibited, as the said petitioner has no copy of the same, nor has he been able to procure one from the War Department; and afterwards, to wit, on the 18th day of September, 1860, the Secretary of War, by a further explanatory order of that date, removed the restriction as to the kind of supplies to be furnished, as contained in the order of 9th of July, 1860, and also provided that such supplies as should be purchased in the eastern cities for the United States troops in Arizona, should be inspected by the United States prior to their shipment: all of which will more fully appear by reference to a copy of

said explanatory order of 18th September, 1860, hereby made a part of this petition, and marked "Exhibit D," as No. 1, herein.

Seventeenth. Your petitioner further states that he is the sole owner, in his own right, of said claim; that the same was presented by memorial and proof to the thirty-seventh Congress, duly referred to the "Committee on Claims," and, without any action of said committee on said claim, the said committee was discharged from the consideration of the same, and leave granted your petitioner to withdraw the papers in said claim, with a view of presenting the same to the Court of Claims for adjudication.

Eighteenth. In consideration of the premises, your petitioner asks the court to take jurisdiction in the case, and, upon proof of the facts, to adjudge and decree to your petitioner the sum of ($139,455 14) one hundred and thirty-nine thousand four hundred and fifty-five dollars and fourteen cents, and the further sum of ($200,000) two hundred thousand dollers, or so much thereof as may be just and equitable, for his profits herein, to be paid out of the treasury of the United States.

All of which is most respectfully submitted.

WILLIAM S. GRANT.

BLACK, DUNNELL & WATTS,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, *Washington County:*

William S. Grant, upon his oath, states, that the matters and things set forth in the foregoing petition, signed by him, so far as stated from his own knowledge, are true in substance and in fact, and, so far as stated from the information of others, he believes them to be true.

WILLIAM S. GRANT.

Sworn to and subscribed before me, this 28th day of March, 1863.

EDMUND F. BROWN,
Commissioner of the Court of Claims.

8 *Exhibit A.*

WASHINGTON, *March* 5, 1860.

To Hon. J. B. Floyd, Secretary of War.

SIR: We propose furnishing the quartermasters' and commissary departments with all the supplies required for the military posts now, or that may be hereafter established in what is known as Arizona, north and west of, and including Fort Fillmore, for two years from and after the expiration of your order of 26th March, 1859, in favor of T. W. Taliafero, and also for the unexpired term for which the said Taliafero is authorized to supply under his said order, extending to and embracing the boundaries first above described, at twelve per cent. less than the ruling prices paid by the United States for same or similar supplies furnished or procured at said posts during the

past year, with a reasonable allowance for transportation to such posts, estimating said transportation from the nearest post now established.

WILLIAM S. GRANT.

I have been earnestly requested by T. W. Taliafero, esq., to procure an extension of his contract for furnishing supplies to the army in Arizona, both in respect to time and posts to be furnished; and having entire confidence in Mr. Taliafero, and desiring to serve him, and having full confidence that this arrangement will be advantageous to the government, on the most reliable information, I recommend, in his name and behalf, the issuing of the order requested by the within letter, including the name of Mr. Grant.

WILLIAM M. GWIN.

It is hereby certified that the foregoing is a true copy from the original on file in the War Department.

W. R. DRINKARD, *Chief Clerk.*

War Department, 9th March, 1860.

Exhibit B.

The order in favor of T. W. Taliafero, bearing date the 26th March, 1859, is hereby renewed and extended in favor of the said Taliafero and William S. Grant for two years from the expiration of the twelve months for which it was given, and they are now authorized to furnish all the supplies that may be needed at all the posts that may now or hereafter be established in that portion of the proposed Territory of Arizona lying south of the parallel of 33° 36′ north latitude, and west of the meridian of 106° 35′ west longitude, provided
9 that the said Taliaferro and Grant will furnish said supplies at twelve per cent. less than the ruling prices paid by the United States for similar supplies furnished or procured at said posts during the past year, to which prices shall be added a reasonable allowance for transportation to any new posts that may be established, estimating said transportation from the nearest post now established within said boundary; provided, also, that the prices to be paid in future under the order of 26th March, 1859, in favor of said Taliafero, shall be regulated and governed by the prices that may be paid Taliafero and Grant under this order.

JOHN B. FLOYD,
Secretary of War.

War Department, March 9th, 1860.
To the Quartermaster General, Commissary General of Subsistence.

I certify that the foregoing is a true copy of the original on file and on record in the War Department.

W. R. DRINKARD,
Acting Sec'y of War.

War Department, March 10th, 1860.

Exhibit C.

TUCSON, *Sept. 1st*, 1860.

CAPTAIN:

I write to inform you, as commanding officer at Fort Buchanan, that I have sold, transferred, and assigned to Wm. S. Grant all my part, share, and interest in contracts, either now made, or hereafter to be made with the government, under and by virtue of the order of the Secretary of War, bearing date March 9th, 1860, in favor of said Grant and myself, and he alone is, from and after this date, authorized and empowered to contract for and deliver all supplies, and receive payment for the same, under operation of said order.

I am, sir, very respectfully, your
Most obedient servant,
T. W. TALIAFERO.

Signed:

CAPT. R. S. EWELL,
Commanding Fort Buchanan, N. M.

A true copy.

Signed: HORACE RANDALL,
Lt. 1st Dragoons, A. A. C. S.

10 *Exhibit D, No. 2.*

This agreement made and entered into this ninth day of September, one thousand eight hundred and sixty, (agreeable to orders from the Department of War, bearing date of March 9th, 1860,) by and between Lieutenant Horace Randall, 1st dragoons, acting assistant commissary of subsistence, United States army, for and on behalf of the United States of America of the first part, and William S. Grant, of Tucson, Arizona, of the second part, for himself, his heirs, executors, and administrators, witnesseth: that the said parties have covenanted and agreed, and by these presents do covenant and agree, to and with each other as follows, viz:

I. That the said William S. Grant shall furnish at any time in any of the months (subsequent to the month of September) during the years of one thousand eight hundred and sixty, and sixty-one, and sixty-two, up to the twenty-sixth day of March of the latter year, (one thousand eight hundred and sixty two,) all the fresh beef, bacon, bacon-hams, flour and beans, candles and soap, that may be needed at Fort Buchanan, N. M., and at all the posts that may now, or hereafter, be established in that portion of the proposed Territory of Arizona, lying south of the parallel of 33° 36′ north latitude, and west of the meridian of 106° 35′ west longitude, provided that said William S. Grant will furnish said supplies at twelve per cent. less than the ruling prices paid by the United States for similar supplies furnished or procured at said posts during the past year, to which prices shall be added a reasonable allowance for transportation to any new posts that may be established, estimating said transportation from the nearest post now established within the said boundary.

II. That said William S. Grant agrees and binds himself to have a place of business, or agency, at, or in the vicinity of Tucson, Arizona Territory, where notice shall be given by the United States of supplies which the said Grant will be required to furnish under this agreement.

III. In order that the said William S. Grant shall be in readiness to meet the demands and requirements made upon him for supplies of bacon, bacon-hams, candles and soap, under this contract and agreement, due notice shall be given him, or his agent, of the quantity and kind of stores to be furnished at any one time, and of the place of their destination, subject to such changes as may be decided upon while in transitu as herein provided for; that is to say, for any supplies that may be needed at any of the posts heretobefore mentioned, one hundred and twenty days' notice; and all other supplies, viz: beef, flour, and beans, being articles which are and can be furnished within a convenient and reasonable distance of the posts or points of destination, shall be furnished according to the demands.

IV. The military stores and supplies which shall be furnished under this agreement, destined to Fort Buchanan or other posts that are or may be designated in the Territory of Arizona, shall be
11 consigned to Fort Buchanan or such other posts, and receipts shall be given by the officer of the subsistence department, serving at the place of consignment, for the full amount of stores that shall be delivered, and, upon such receipts, payments shall be made to said William S. Grant as hereinafter provided.

V. In all cases where stores have been furnished by the said William S. Grant, under this contract, a board of survey shall be called without delay on their arrival at the point of destination or delivery, to examine the quality, quantity, and condition of the stores offered for delivery, and if said stores thus offered are of a quality inferior to those ordinarily furnished for the United States, they shall be rejected.

VI. That in case any one or more of the trains of the said William S. Grant are stopped or delayed at any time or place exceeding two days, either under the order of an officer of the Quartermaster's Department, or the commanding officer of a post or of troops present, or by any other act on the part of the government or its agents, the contractor shall be paid, upon a statement in writing procured from the officer or agent of the government causing the delay, the sum of five dollars per diem for each and every team in the train, for each and every day they may be so delayed; and in case the officer or agent of the government aforesaid shall refuse to furnish such statements in writing, then the delay shall be paid for as above on the affidavits, or other satisfactory evidence, of credible and competent witnesses. All orders from officers or agents of the government to halt trains shall be given to the contractor, or his agents, in writing, expressing fully the reason thereof.

VII. That the said William S. Grant shall be furnished with a suitable escort for the protection of the supplies, should they [he] be required to furnish in any one train a less quantity than one hundred

and twenty-five thousand pounds, but when required to furnish one hundred and twenty-five thousand pounds or more, then no escort shall be furnished.

VIII. That in case of failure, by reason of deficiency in the quality or quantity of the supplies furnished, or from any other cause on the part of the said William S. Grant to be in readiness to meet the demands and requirements made upon him for supplies under this contract or agreement, after due notice shall be given him or his agents, as provided for in article III of this agreement, then the officer or authorized agent of the subsistence department charged with the duty of receiving the stores and supplies at Fort Buchanan or other posts within the aforesaid boundary, as set forth in article I of this agreement, shall have power to supply the deficiency, either by purchase or special contract, as the said officer or agent may elect, and the said William S. Grant will be charged with the difference of cost or expense thus incurred.

IX. For and in consideration of the faithful performance of the stipulations of this agreement, the said William S. Grant shall be paid at the office of the subsistence department at Fort Bu-
12 chanan, or other posts of delivery, according to the rates specified in a tabular statement hereto annexed, signed by the parties to this agreement, by drafts upon the assistant treasurer of the United States at New York city, or in specie, if equally convenient to the subsistence department at the post of delivery.

X. It is expressly agreed and stipulated between the parties of this contract that, upon mutual agreement, it may be changed, altered, modified, or abrogated in the whole or in part.

XI. It is expressly agreed and understood between the parties to this contract that the prices to be paid for beef, flour, and beans delivered at Fort Fillmore, N. M., under this contract, shall be determined by the chief commissary of subsistence at department headquarters, Santa Fe, N. M., and by him inserted in a tabular statement, there being no data at this post to compute them.

XII. It is expressly agreed and understood between the parties to this contract, that the bonds required shall be determined by the commissary general of subsistence.

XIII. It is expressly understood that no member of Congress shall be admitted to any share or part in this contract or agreement, or derive any benefit to arise therefrom.

In witness whereof, the undersigned have hereunto placed their hands and seals, at Fort Buchanan, Arizona Territory, this day and date above written, and in presence of—

Witness: EDWARD H. SCOVEL.

Witness: JASPER S. WHITING.

(Signed) HORACE RANDALL. [SEAL.]
Lt. 1st Dragoons, A. A. C. S.

(Signed) WILLIAM S. GRANT. [SEAL.]

13 Statement of prices to be paid by the United States for subsistence stores, under contract of September 9th, 1860, with

Mr. William S. Grant, of Tucson, for troops stationed in the proposed Territory of Arizona, being 12 per cent. less than paid last year for similar supplies

Articles.	Prices to be paid for articles imported from the east, exclusive of transportat'n.			Prices to be paid, delivered at posts, inclusive of transportation, as per Article I.			
				At Fort Buchanan.		At Fort Fillmore.	
	Quantity	Cents.	Extra for package. Cents.	Quantity	Cents.	Quantity	Cents
Fresh beef on hoof	------	------	-------	pr. pou'd	7 92-100	------	----
Bacon	pr. pou'd	19 60-100	45 56-100	------	------	------	----
Bacon-hams	do.	10 56-100	70 40-100	------	------	------	----
Flour in sacks	do.	do.	do.	pr. pou'd	10 56-100	------	----
Beans do	do.	do.	do.	do.	6 16-100	------	----
Candles sperm	do.	36 58-100	29 4-100	------	------	------	----
Do. star	do.	17 60-100	do.	------	------	------	----
Soap	do.	5 72-100	do.	------	------	------	----

(Signed) HORACE RANDALL,
Lt. 1st Dragoons, A. A. C. S.

(Signed) WILLIAM S. GRANT.

I hereby protest against Article No. 1 of this agreement, entered into this ninth day of September, one thousand eight hundred and sixty, by and between Lieut. Horace Randall, 1st Regiment of Dragoons, A. A. C. S., for and on behalf of the United States of America, of the first part, and William S. Grant, of Tucson, Arizona, for himself, his heirs, executors, and administrators, of the second part, limiting me to certain articles and supplies to be furnished for the use of the troops that are or may be stationed in that portion of the proposed Territory of Arizona, as prescribed in orders from the War Department, bearing date of March 9, 1860, and hereunto appended, marked "B;" said order giving me authority to furnish all supplies and stores that may be furnished for the use of the troops, within the boundary therein prescribed.

(Signed) WM. S. GRANT.

To the Quartermaster General and Commissary General of Subsistence:

"B."

The order in favor of T. W. Taliafero, bearing date the 26th of March, 1859, is hereby renewed and extended in favor of the said T. W. Taliafero and Wm. S. Grant, for two years from the expiration of the twelve months for which it was given, and they are now authorized to furnish all the supplies that may be needed at all the
14 posts that may now or hereafter be established in that portion of the proposed Territory of Arizona, lying south of the parallel of 33° 36′ north latitude, and west of the meridian of 106° 36′ west longitude, provided that said Taliafero and Grant will furnish said supplies twelve per cent. less than the ruling prices paid by the United States for similar supplies furnished or procured at said posts during

the past year, to which shall be added a reasonable allowance for transportation to any new posts that may be established, estimating said tranportation from the nearest post now established within said boundary; provided also, that the prices to be paid in future under the order of 26th March, 1859, in favor of said Taliafero shall be regulated and governed by the prices that may be paid Taliafero and Grant under this order.

(Signed) J. B. FLOYD,
Secretary of War.

WAR DEPARTMENT, *March 9th* 1860.

A true copy.
(Signed) J. L. DONALDSON,
A. Q. M.

Endorsed:

Respectfully furnished Lieutenant H. Randall, A. A. Q. M., Fort Buchanan, by order of the Q. M. General. (Signed) J. L. Donaldson, A. Q. M. A true copy. Horace Randall, Lt. 1st Dragoons, A. A. C. S.

Exhibit (E.)

This agreement made and entered into, this twentieth day of September, one thousand eight hundred and sixty, agreeable to order from the War Department of March 9th, 1860, by and between Lieutenant Horace Randall, 1st dragoons, acting assistant quartermaster, United States army, for and in behalf of the United States of America, of the first part, and Wm. S. Grant, of Tucson, Arizona, of the second part.

This agreement witnesseth that the said Lieutenant Horace Randall, for and on behalf of the United States of America, and the said W. S. Grant, for himself, his heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree to, and with each other, in manner following, viz:

I. That the said W. S. Grant shall furnish and deliver at Fort Buchanan and Fillmore, and at all the posts or military stations
15 that are now, or may hereafter be, established in that portion of the proposed Territory of Arizona lying south of the parallel of 33° 36′ north latitude, and west of the meridian of 106° 35′ west longitude, all the supplies appertaining to the Quartermaster's Department that are usually purchased in the Territory, viz:

Forage, (corn, hay, and topped fodder,) coal, lime, adobies, lumber, and wagon timbers, of a quality not inferior to that heretofore procured; provided, that said W. S. Grant shall furnish said supplies twelve per cent. less than the ruling prices paid by the United States for similar supplies furnished, or procured at said posts, during the past year.

This contract to be in force from its date during the years one thousand eight hundred and sixty, sixty-one, and sixty-two, up to the twenty-sixth day of March, of the latter year (one thousand eight hundred and sixty-two.)

II. The prices to be paid, as provided in article I, shall be determined for each post or station that is or may be established by the officer charged with providing such supplies for such posts or stations, allowing at new posts or stations such additional prices as its further distance from sources of the required supplies shall warrant, as a reasonable compensation for longer transport, which prices so fixed shall be subject to the approval of the chief officer of the quartermaster's department in the military department of New Mexico.

III. For the transportation of such subsistence stores, regularly delivered and accepted, as the said W. S. Grant has contracted and is required to deliver at posts within limits described in Art. I, (the prices of which, paid by the subsistence department,) does not include transportation, such as bacon-sides, bacon-hams, candles, and soap,) the said W. S. Grant shall be paid for the gross weight received at the different military posts of delivery, at the average rates paid Majors, Russell & Waddell during 1858 and 1859, deducting from said rates, twelve per cent., viz: to Fort Union, $15 40-100 per 100 pounds, and at the rate of $1 67½-100 per 100 pounds per 100 miles from Fort Union to the place of destination, calculating the distance by the most practicable route; and to the above prices shall be added ten per cent. for transportation of bacon sides, pine lumber, shingles, and hard bread.

IV. Payment shall be made monthly, or on their delivery and acceptance, for the amount of supplies furnished under this contract, in drafts on the assistant treasurer of the United States, or in specie, if equally convenient to the quartermaster's department, at the post of delivery; but in the event of the acting assistant quartermaster's being without funds, then payment to be made as soon thereafter as funds may be received for that purpose.

V. The said William S. Grant agrees and binds himself to have a place of business, or agency, at or near Tucson, Arizona Territory, where notice may be given by the United States of supplies which the said W. S. Grant will be required to furnish under this contract.

16 VI. In order that the said W. S. Grant shall be in readiness to meet the demands and requirements made upon him for supplies under this contract and agreement, due notice shall be given him or his agent of the quality and kind of stores to be furnished at one time, and of the place of their destination, subject to such changes as may be decided upon, while in transitu, as herein provided for; that is to say, for any supplies that may be needed at any of the posts heretofore mentioned, one hundred and twenty days notice.

VII. It is expressly agreed and stipulated between the parties to this contract, that all the articles of quartermaster's supplies above contracted for, which can be procured within a convenient and reasonable distance of the posts or points of delivery, shall be furnished according to the demands.

VIII. That the said W. S. Grant shall be furnished with a suitable escort for the protection of the supplies, should they (he) be required

to furnish in any one train a less quantity than one hundred and twenty-five thousand pounds; but when required to furnish one hundred and twenty-five thousand pounds or more, then no escort shall be furnished.

IX. That in case of failure, by reason of deficiency in the quality or quantity of the supplies to be furnished, or from any other cause, on the part of the said W. S. Grant to be in readiness to meet the demands and requirements made upon him, for supplies under this contract or agreement, after sufficient notice shall have been given, then the officer of the quartermaster's department, charged with the duty of receiving the stores or supplies at Fort Breckenridge, or any other post or station within the aforesaid boundary, set forth in Art. I, of this agreement, shall have power to supply the deficiency, either by purchase or special contract, as the said officer may elect, and the said W. S. Grant will be charged the difference of cost or expense thus incurred.

X. It is expressly agreed and stipulated between the parties to this contract, that upon mutual agreement it may be changed, altered, modified, or abrogated, in the whole or in part.

XI. It is expressly understood that no member of Congress shall be admitted to any share or part in this contract or agreement, or derive any benefit to arise therefrom.

In witness whereof, the undersigned have hereunto placed their hands and seals, at Fort Buchanan, Arizona Territory, this day and date above written, and in presence of—

[SEAL.] HORACE RANDALL,
2d Lt. First Dragoons, A. A. Q. M.

Witness: P. LASHBROOK.

[SEAL.] WM. S. GRANT.

Witness: JOSEPH L. ADAMS.

17 *Supplementary article.*

I. It is expressly understood between the parties to this agreement, that the bonds required shall be one-fourth the value of the articles to be supplied, to be determined by the quartermaster general, U. S. Army, there being no data at this post to determine said amount.

II. That in case any one or more of the trains of the said William S. Grant are stopped or delayed at any one time or place exceeding two days, either under the orders of the officer of the Quartermaster's Department or the commanding officer of a post, or troops present, or by any other act on the part of the government or its agents, the contractor shall be paid, upon a statement in writing, procured from the officer or agent of the government causing the delay, the sum of five dollars per diem for each and every team in the train, for each and every day they may be so delayed; and in case the officer or agent of the government aforesaid shall refuse to furnish such statement in writing, then the delay shall be paid for as above on the affidavits or other satisfactory evidence of credible and competent

witnesses. All orders from officers or agents of the government to halt trains shall be given to the contractor or his agent in writing, expressing fully the reasons therefor.

HORACE RANDALL, [L. S.]
2d Lieut. 1st Dragoons, Acting A. Q. M.

Witness: P. LASHBROOK.

W. S. GRANT, [L. S.]

Witness: JOSEPH L. ADAMS.

Rec 224—2

TABULAR STATEMENT.

Schedule of prices per hundred pounds, per hundred miles, to be paid to Russell, Majors & Waddell, contractors, for transportation of military stores and supplies, under an agreement between Major General T. S. Jessup, Quartermaster General, United States Army, on behalf of the United States, and the said firm of Russell, Majors & Waddell, bearing date at Washington city, D. C., on the sixteenth day of January, 1858.

DESTINATION, OR POINTS OF TAKING UP STORES.	FIXED DISTANCES.	Period of starting from points mentioned in the agreement above referred to, and the rates of payment, except on hard bread, bacon, pine lumber, and shingles, provided for in Article X of this agreement.								
		From Jan'y 1st to Feb'y 28th.	For the month of March.	For the month of April.	From May 1st to June 30th.	For the month of July.	For the month of August.	For the month of September.	For the month of October.	From Nov. 1st to Dec. 31st.
To Fort Union and intermediate points	700 miles as ascertained	$3 50 2 20	$2 80 2 20	$2 10 1 80	$1 25 1 50	$1 50 1 60	$1 80 1 70	$2 25 1 90	$2 80 2 00	$4 50 2 20

Witnesses to signature of General T. S. Jessup:
W. H. RUSSELL, A. MAJORS & RUSSELL,
MAJORS & WADDELL,
E. S. LIBBY, *Major and Q. M.*
JOHN S. MOORE,
JOSEPH B. TERRY,
E. W. BRADBURY, also
W. B. WADDELL.

Signed in duplicate:
THOS. S. JESSUP, *Q. M. G.* [L. S.]
WM. H. RUSSELL. [L. S.]
ALEX. MAJORS. [L. S.]
W. B. WADDELL. [L. S.]

RUSSELL, MAJORS & WADDELL

True copy:

(Signed) J. L DONALDSON, *A. Q. M.*

19 I hereby protest against article No. 1 of this agreement, entered into this twentieth day of September, one thousand eight hundred and sixty, by and between Lieutenant Horace Randall, 1st regiment U. S. dragoons, act. assist. quartermaster for and on behalf of the United States of America, of the first part, and W. S. Grant, of Tucson, Arizona, for himself, his heirs, executors, and administrators, of the second part, limiting me to certain articles of quartermaster's supplies to be furnished at the posts in that portion of the proposed Territory of Arizona, as prescribed in orders from the War Department, bearing date of March 9, 1860, and hereunto appended, marked "A," said order giving me authority to furnish all supplies and stores that may furnished or procured for the use of the posts within the boundary therein prescribed.

(Signed) WILLIAM S. GRANT.

To the Quartermaster General and the Commissary General of Subsistence:

"A." The order in favor of T. W. Taliafero, bearing date the 26th of March, 1859, is hereby renewed and extended in favor of the said Taliafero and W. S. Grant, for two years from the expiration of the twelve months for which it was given; and they are now authorized to furnish all the supplies that may be needed at all the posts that may be now, or hereafter be, established in that portion of the proposed Territory of Arizona lying south of the parallel of 33° 36′ north latitude, and west of the meridian of 106° 35′ west longitude, provided that said Taliafero and Grant will furnish said supplies at twelve per cent. less than the ruling prices paid by the United States for similar supplies furnished or procured at said posts during the past year; to which prices shall be added a reasonable allowance for transportation to any new posts that may be established, estimating said transportation from the nearest post now established within said boundary; provided, also, that the prices to be paid in future under the order of 26th March, 1859, in favor of said Taliafero, shall be regulated and governed by the prices that may be paid Taliafero and Grant under this order.

(Signed) J. B. FLOYD,
Sec'y of War.

War Department, March 9, 1860.

True copy.

(Signed) J. L. DONALDSON,
Act. Asst. Q. M.

Endorsed:

Respectfully furnished Lt. Horace Randall, A. A. Q. M., Fort Buchanan, by order of the Q. M. General. (Signed) J. L. Donaldson, N. M.

OFFICE C. G. S., *Jan.* 15, 1863.

A true copy.

I. P. TAYLOR,
C. G. Sub.

20 The Secretary of War has designated the following as the articles in the commissary line, to be furnished by Messrs. Taliafero & Grant, under the foregoing order, viz: bacon, beef, flour, beans, soap, candles, and ham.

By order:

(Signed) W. R. DRINKARD,

OFFICE C. G. S., *Jan.* 15, 1863.

A true copy.

I. P. TAYLOR,
C. G. Sub.

21 *Exhibit G.*

A general statement of supplies and other goods purchased in New York, Boston, and other places in the United States, by William S. Grant, through his agents, Pierce & Bacon, of Boston, and sold him by them, and by other firms and parties, including other purchases made by Francis Davis, his general agent in Texas, embracing insurances, commissions, freights, and other expenses; together with an account of wagons and oxen, horses and mules, purchased by Mr. Grant and Mr. Davis for the conveyance of these goods and supplies from Lavaca, Texas, to Arizona: this statement to include the expenses of trains at Lavaca and onwards, to the place of capture, and transportation of government stores, as per contract. Bills of particulars, duly vouched, will be given in evidence to sustain the following amounts:

Per bill of	Butler & Sise	$270 30
Do.	Francis A. Fogg & Co.	379 16
Do.	Nourse & Co.	673 25
Do.	Hart, Baldwin & Botume	537 73
Do.	Taylor, Davis & Crosby	253 79
Do.	Pierce & Bacon	45 37
Do.	Francis A. Fogg & Co.	371 56
Do.	Nourse & Co.	142 75
Do.	Pierce & Bacon	179 38
Do.	Pierce & Bacon	69 88
Do.	Pierce & Bacon	6,044 17
Do.	Pierce & Bacon	4,782 12
Do.	Pierce & Bacon	11,429 88
Do.	Pierce & Bacon	1,527 60
Do.	J. B. McCausland	377 00
Do.	B. A. Neal	1,092 04
Do.	Bacon & Russell	300 65
305 yoke of oxen, at $47 50		14,487 50
7 horses, at $125		875 00
8 do. at $100		800 00
2 mules, at $75		150 00
50 new 6-yoke ox-wagons, at $125		6,250 00

Expenses of train at Lavaca, and onwards, including freights, commissions, and purchases	32,677 25
Transportation of government stores, as per contract, 184,787 pounds, at 29 81-100 per lb.	55,085 00
	$138,802 38

22 *Exhibit H.*

OFFICE COM. GEN. SUBS.,
Washington, April 3, 1861.

Hon. S. Cameron, Secretary of War:

SIR: Herewith I have the honor to submit for your information copies of instructions from the Hon. Jno. B. Floyd, ex-Secretary of War, marked A, B, C, directing me, under certain restrictions, to purchase all subsistence of certain classes named therein, which may be required for the use of the troops in Arizona, up to the 26th March, 1862, from Messrs. Taliafero and Grant.

Leaving out of consideration the peculiar character of these instructions, I respectfully recommend that they be rescinded, and, that from a sense of insecurity, the articles of bacon, soap, candles, and hams be forwarded from St. Louis, and that the articles of fresh beef, flour, and beans may be procured in Arizona or Sonora, of those persons who will furnish them at the cheapest rates.

Very respectfully, your most ob't servant,
(Signed) I. P. TAYLOR,
A. Com. Gen. Sub.

[The above is endorsed as follows:]

Office Com. Gen. Subs., April 3, 1861. I. P. Taylor, A. C. G. Subs.

To Hon. Simon Cameron, Sec. of War:

Submitting copies of instructions from ex-Sec. of War, J. B. Floyd, directing that subsistence of certain stores be purchased from Taliafero & Grant, and requesting that they be rescinded.

Approved.
(Signed) SIMON CAMERON,
Sec. of War.

OFFICE C. G. S., *January* 15, 1863.

A true copy.

I. P. TAYLOR,
C. G. Sub.

23 *Exhibit I.*

BOSTON, *September 24th*, 1860.

Col. D. D. Tompkins,
Asst. Q. M. G., U. S. A., New York:

DEAR SIR: We are the purchasing agents of Messrs. Taliafero & Grant, contractors for supplying the army in Arizona, and are

informed that you will appoint an inspector to examine our purchases here. Will you have the kindness to do so at your very earliest convenience, and advise us when we may expect you here. There has been great delay at Washington in furnishing us with the lists of supplies required, and which we only received on Saturday, 22d, although the goods should have been shipped hence a month ago. The opportunities of shipment to Lavaca, are very infrequent, and if the present opportunity is availed of, it must be this week.

Very respectfully, yours,

(Signed) PIERCE & BACON.

Messrs. T. & G's train will have been waiting at Lavaca, at least a month when these goods arrive, in consequence of the delay referred to above.

Exhibit K.—Certificate of inspection.

I certify that on the 3d, 4th, and 5th, inst., I inspected, under the orders of the Commissary General of Subsistence of the United States army, of the 19th and 21st ult., and by request of Messrs. Pierce & Bacon, of Boston, and through the agency of Mr. William T. Hart, in New York and Brooklyn, the following enumerated commissary articles, viz: sixty-four (64) barrels of pork; ten thousand seven hundred and sixty-six (10,766) pounds, 38 tierces of bacon hams, and fifty thousand one hundred and fifty (50,150) pounds (163 boxes) of bacon sides; and that I find that the pork is an excellent article of new corn-fed mess pork, in good, strong, sound, full-hooped barrels, with four iron hoops to each, marked "Tueson, N. M.." The hams are new and sugar cured, of excellent quality, bagged and packed in salt, and contained in good, strong, well secured tierces. Thirty-four (34) tierces, containing nine thousand six hundred and forty (9,640) pounds, marked "Tucson, N. M;" one (1) tierce, containing two hundred and eighty-two (282) pounds, marked "Fort Fillmore," and three (3) tierces, containing eight hundred and forty-four (844) pounds, marked "Fort Apache." The bacon sides are contained in one hundred sixty-three (163) good, strong,
24 iron-strapped boxes. The meat, although of the last winter's pack, is a good article of clear bacon sides, and has been recently thoroughly smoked. All of the articles furnished being of the kind and quality usually furnished by the subsistence department.

(Quadruplicates.)

OFFICE OF COMMISSARY OF SUBSISTENCE,

New York, December 6th, 1860.

A. B. EATON,

Brevet Major and C. S. U. S. A.

Exhibit (D,) No. 1.

My order of the 9th March last, as modified by that of the 9th of July last, authorizes Messrs. Tahafero and Grant to furnish all the supplies that may be needed at all the posts that may now, or here-

after be established in Arizona, except horses, wagons, and harnesses. It also provides for an allowance to those parties on account of transportation under certain circumstances.

I make this explanation to prevent any misunderstanding of those orders, and to secure their prompt execution in time for the coming season.

For any transportation they may have to perform between Forts Clark and Fillmore, they will be furnished with a proper escort.

Any articles purchased under these orders for the commissary or quartermaster's department in New York and Boston, will be inspected in advance at those places by the assistant quartermaster, General D. D. Tompkins, or some other officer whom he may designate for that duty.

(Signed) J. B. FLOYD,
Sec. of War.

WAR DEPARTMENT, 18*th September*, 1860.

A true copy.
(Signed) W. R. DRINKARD,
Chief Clerk War Department.

WAR DEPARTMENT, 18*th September*, 1860.

WILLIAM S. GRANT
vs.
THE UNITED STATES.

25 *Amendments to petition.*

* William S. Grant, the petitioner within named, upon his oath, states that no assignment or transfer of his said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated, and that he is justly entitled to the amounts therein claimed from the United States after allowing all just credits and offsets.

WILLIAM S. GRANT.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Sworn to and subscribed before me, this 29th day of May, 1863.
EDMUND F. BROWN,
Commissioner of the Court of Claims.

*William S. Grant, the petitioner, upon his oath, states that he is a citizen of the United States, that he has at all times borne true allegiance to the government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said government.

WILLIAM S. GRANT.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Sworn to and subscribed before me this 29th day of May, 1863.
EDMUND F. BROWN,
Commissioner of the Court of Claims.

26 In the Court of Claims.—No. 1,882.

WILLIAM S. GRANT
vs.
UNITED STATES. } October term, 1863.

And now come the United States, by J. D. McPherson, their solicitor, and say that they are not indebted unto the said claimant in the sum of $339,445 14-100 or any part thereof, in manner and form, as the said claimant hath complained.

JNO. D. McPHERSON,
Assissant Solicitor U. S.

Dated May 11, 1863.
Filed May 11, 1863.

27 In the Court of Claims.

WILLIAM S. GRANT
vs.
THE UNITED STATES. } No. 1,882.

And now, to wit, 4th April, 1864, the court, upon due consideration of the premises, do order, adjudge, and decree that the said claimant take nothing by his suit, and that the said petition be dismissed.

By the Court.

WILLIAM S. GRANT.
vs.
THE UNITED STATES.

28 To the Honorable the Judges of the Court of Claims of the United States:

The petition of Wm. S. Grant, of the State of Minnesota, humbly sheweth:

That your petitioner is claimant in case No. 1,882, which was determined against him by a decree dismissing the petition on the 4th of April, 1864.

Your petitioner complains that he is injured by the decree of this court, and he assigns the following errors:

The court erred in holding—

1. That the contract sued upon was not obligatory upon the United States.

2. That it might well be supposed that the direction of the War Department for the inspection in Boston and New York was at the instance of the claimant, and for his benefit.

3. That the delay occasioned by waiting for the inspection ordered by the War Department might have been avoided by the claimant, and was unnecessary.

4. That the delay to send the goods caused by waiting for inspec-

tion was not the proximate cause of the injury suffered by the claimant.

5. That the evidence does not shew the claimant to have suffered any actual damage by the abrogation of the contract.

6. That the documents were not sufficiently authenticated.

7. That upon the whole case the petition ought to be dismissed.

Your petitioner therefore prays your honors to allow him an appeal from the said decree of this court, so that the subject-matter thereof may be reviewed and considered in the Supreme Court of the United States.

And he will ever pray, &c.

BLACK, LAMON & CO.

Filed June 6th, 1866.

29 In the case of William S. Grant, *vs.* The United States, the Court of Claims certifies the following alterations and modifications of, and additions to, the specification of errors alleged by the petitioner, so as distinctly, fully, and fairly to prescribe the points decided, viz:

That the said John B. Floyd, Secretary of War, by his order, dated at Washington, 9th March, 1860, addressed to the Quartermaster General and the Commissary General of Subsistence, authorized Theo. W. Taliafero and William S. Grant, for two years from 26 Mar., 1860, to furnish and deliver all the supplies that might be needed at all the posts then or thereafter established in that portion of the proposed Territory of Arizona lying south of the parallel of 33° 36′ north latitude, and west of the meridian of 106° 35′ west longitude, provided the said Taliafero and Grant would furnish said supplies at 12 per ct. less than the ruling prices paid by the United States for similar supplies furnished or procured at said posts during the year
30 preceding, to which prices there should be added a reasonable allowance for transportation to any new posts that may be established, estimating said transportation from the nearest post now established within said boundary."

That Lt. Horace Randall, A. A. Q. master at Fort Buchanan, was furnished with a copy of the above order by direction of the Quartermaster General.

That said Taliafero transferred and assigned all his interest and rights in contracts made, or to be made, under said order of Mar. 9th, 1860, to said Grant, and authorized and empowered him, from and after Sept. 1, 1860, to contract for and deliver all supplies and receive payment of the same. And said Taliafero notified the United States of this assignment by letter, dated Tucson, Sept. 1, 1860, and addressed to Capt. R. S. Ewell, commanding Fort Buchanan, N. M. That the United States received and paid for supplies delivered by Mr. Grant under said order of Mar. 9, 1860, in the years 1859 and 1860 at Fort McLane and Fort Fillmore, $41,203 14, and received and paid other sums for other supplies delivered at other places.

31 That two contracts, one relating to commissary supplies,

and dated Sept. 9, 1860. The other relating to quartermaster's stores, and dated Sept. 20th, 1860, were executed in writing by said Lt. H. Randall, on the part of the United States, and by said Grant, and purported to be made agreeable to said order of Mar. 9th, 1860, but they did not conform thereto, and when they were submitted to Mr. Floyd, Secretary of War, they were disallowed and repudiated by him, because they did not conform to said order of Mar. 9th, 1860, and were unauthorized, and it was declared that the order of Mar. 9th was the agreement between the parties.

32 That on the 29 July, 1860, Lt. H. Randall served requisitions for the pork, bacon-sides, bacon-hams, soap and candles, hereinafter mentioned, on Mr. Grant, who was then in Arizona, and who sent them to Boston to his agents, B. Pierce and Bacon, to be filled by them. Messrs. Pierce and Bacon sent to Washington for a ratification by the War Department of the requisitions, and received it on Sept. 22, 1860, with notice that under an order of the War Department, dat. Sept. 18, 1860, the articles to be purchased under the requisitions were to be inspected at Boston and New York by Assistant Quartermaster General D. D. Tompkins, or some other officer whom he might designate for that duty. They applied by letter, dated Sept. 24, 1860, to Col. Tompkins, and were informed by his chief clerk, Mr. Stinson, that he was absent and would return in the middle of the week. On the 27th September, 1860, by letter of that date, Bacon and Pierce wrote again to Mr. Stinson, urging the appointment of an inspector, and complaining of delay; and no inspector being appointed, on the 15th of , 1860, they applied by letter of that date to the Quartermaster General and Commissary General, at Washington. And by letter dated 21st of November,

33 1860, they were notified by brevet Major Eaton, C. S. U. S. A., that he had been directed by the Commissary General of Subsistence to inspect at New York and Boston such commissary articles as might be submitted by them in behalf of Messrs. Taliafero and Grant, and that he awaited a notice from them as to where and when the inspection he was directed to make should be commenced.

34 That it was in evidence that on receiving the requisitions from said Grant the said Pierce and Bacon proceeded to make purchases to fill the same. And that in a letter addressed to Mr. Stinson, chief clerk of Col. Tompkins, dated September 27th, 1860, they stated as follows: "Among the articles we are to buy is 75,000 pounds of bacon sides. They are exceedingly scarce, and as yet we hear of but one lot of prime quality of winter-cured, about 30,000 pounds, in New York." And Bacon and Pierce, in a letter dated Nov. 22, 1860, and addressed to Major A. B. Eaton, in reply to his notice and letter of Nov. 21, 1860, as follows: "We did last week ship a portion of the bacon and all the soap and candles required for this train without inspection by the department, and have purchased in New York sufficient bacon to complete the order, which will be ready for shipment in about one week, when we shall be glad to avail ourselves of your services. The bacon already shipped was inspected by Mr. Charles Parker."

35 That on the 3d, 4th, and 5th of December, the said Eaton inspected sixty-four barrels of pork, ten thousand seven hundred and sixty-six (10,766) pounds net (38 tierces) of bacon hams, and fifty thousand one hundred and fifty (50,150) pounds net (163 boxes) of bacon sides, the pork marked Tucson N M; 34 tierces of hams, containing nine thousand six hundred and forty (9,640) pounds net, marked Tucson, N M; one tierce, containing two hundred and eighty-two (282) pounds net, marked "Fort Fillmore," and three tierces, containing eight hundred and forty-four (844) pounds net, marked "Fort Apache;" said *said* articles were approved and so certified that previously to said inspection, and in the fall of 1860, ninety-eight boxes of bacon sides purchased by said Bacon & Pierce, Sept. 27, 1860, were, by their direction, inspected in New York by Charles Parker, engaged in the business of inspection, and certified by him to be of good quality and condition, and to contain thirty-
36 nine thousand three hundred and thirty-six pounds (39,336) and marked, inspected by C. Parker, New York. The weight of said box was marked on the outside.

That on the facts and evidence above stated the court found that the only delay attributable to the United States was the delay in appointing an inspector from the 22 Sept. to the 21st Nov., 1860. That such delay did not preclude Pierce and Bacon from purchasing the supplies required, and having them ready for inspection. That the United States were not bound to be ready for inspection or to appoint an inspector until they were notified the supplies were ready for inspection. That the supplies inspected by Major Eaton were sold to said Grant by said Pierce & Bacon on the 20th of November, 1860. That the United States were ready to inspect supplies on the 21st of Nov., 1860, and thereafter, and on that date so notified said Pierce & Bacon. That the inspection was not made at that time, but was postponed at the request of said Pierce & Bacon, because from the difficulty they had found in procuring the bacon sides; they were not then ready for shipment and inspection. That there was
37 no evidence of any notice to the United States to make inspection other than that contain in the letter of Pierce & Bacon to Major Eaton, dated Nov. 22, 1860, and above set forth.

38 That about the middle of November, 1860, the said bacon sides, inspected by said Parker, and eight thousand six hundred and thirty (8,630) pounds net of candles, and twenty thousand four hundred and ninety-six (20,496) pounds net of soap, which had not been inspected, were shipped on board the E. W. Pratt to Lavaca, consigned to Messrs. Baughan and Walker for said Grant, by his orders. And the supplies inspected by said Eaton were also immediately thereafter shipped to Lavacca, on board the W. S. Tisdale, consigned, as aforesaid, and arrived at Lavacca about the tenth of January, 1861. The supplies were landed and stored, and laden into the wagon train which started to proceed on its destination—twenty-one wagons on the 12th January, and twenty wagons on the 15th of January. After proceeding a short distance, and owing to want of pasturage at that season of the year, they were obliged to stop and go into camp and await the growth of grass, and thus a de-

lay was incurred of about two months and ten days, when the train again proceeded, and arrived at Rio Honde, where it was cap-
39 tured on the 20th April by the troops of Texas, then in a state of rebellion.

That the said pork, bacon sides, and bacon hams, soap and candles, were the only supplies purchased on said requisitions, and that their cost was as follows, viz: Prime cost and charges delivered to the train at Lavacca, $20,694 73.

That the gross weight of the pork, bacon sides, bacon hams, soap and candles, purchased under said requisitions, and laden on said train, was $167,698 lbs.

That the prices to be paid by the United States for said supplies on delivery, was as follows:

For beef on the hoof, per pound, cents 7 92-100, inclusive of transportation.

For bacon, pr. pound, cents 9 60-100; extra for package, cents 45 56-100.

For bacon hams, pr. pound, cents 10 56-100; extra for package, cents, 70 40-100.

For candles, sperm, pr. pound, cents 36 58-100; extra for package, cents 29 4-100.

For candles, star, pr. pound, cents 17 60-100; extra for package, cents 29 4-100.

Soap, pr. pound, cents 5 72-100; extra for package, cents, 29 4-100.

That the prices to be paid by the United States for transportation (except beef on the hoof) was an average of 29 31-100 cents.

40 That there were purchased between the 26th and 29th Sept., 1860, by said Pierce & Bacon for said Grant, but not under the requisitions aforesaid, nor for delivery to the United States, various articles of merchandise which were shipped by the Ben Delavo and the E. W. Pratt, consigned to said Baughan Walker, and received there and laden on board the wagon train, and captured with it.

That the cost of said articles of merchandise was, *was*, when delivered to the train at Lavacca, including prime cost and charges, $2,765 35.

That the gross weight of said articles was about 20,000 lbs.

41 That Francis Davis, agent of said Grant, and master of his baggage train, by the directions of said Grant, purchased for him in Texas, three hundred and five yoke of oxen, at an average cost of forty-seven dollars and fifty cents per yoke, and twenty horses, at an average cost of fifty dollars each, and six mules, at an average cost of seventy-five dollars each; and these, according to the directions of said Grant, were at Levaca, in the latter part of October, waiting the arrivals of the wagons and the goods above mentioned; the wagons arrived at Levaca early in November, with every material of supply required to start the train, such as yokes, chains, &c. Twenty yoke of oxen, five horses, and four mules, perished for want of subsistence while detained, waiting for the grass to grow on the route from Levaca to Rio Honde; when the train was captured, it consisted of 235 yoke of oxen, fifteen horses, and two mules, with their equipments, and forty-one wagons, capable each of carrying

5,000 lbs., of which thirty-five wagons with six yokes of oxen each, were required for the goods purchased under said requisitions, to be delivered to the United States at the posts in Orizona. Of the
42 fifty-one wagons received at Levacca, ten were left there in charge of Baugham and Walker, and were afterwards confiscated by the rebel government.

That when captured, the animals were worth their cost, and the wagons and equipments were worth two hundred and fifty dollars each.

That the expenses of the train while waiting at Levacca and onwards, was $15,987 41.

That the order of Mar. 9th, 1860, of John B. Floyd, Secretary of War, was rescinded by his successor, Hon. Simon Cameron, April 3d, 1860, and it was not shown in evidence, what, or that any, supplies were needed by or furnished to troops of the United States in Arizona after the rescission of said order, or what, or that any damage was sustained by said claimant by such rescission.

43 That the court ruled.

1. That the contracts executed Sept. 9th and 20th, 1860, between Lt. Randall and the claimant, were not obligatory on the United States.

2. That the order of 9 Mar., 1860, did not require that the supplies should be inspected at Boston and New York, and any subsequent request or direction in that regard, was not obligatory on the complainant, and such inspection did not transfer the property inspected to the United States.

3. That it might well be supposed that the direction of the war department for the inspection in Boston and New York, was at the instance of the claimant, and for his benefit.

4. That the delay occasioned by waiting for the inspection ordered by the War Department, might have been avoided by the claimant, and was unnecessary.

5. That the delay to send the goods caused by waiting for inspection, was not the proximate cause of the injury suffered by the claimant.

6. That the evidence does not show the claimant to have
44 suffered any actual damage or loss of profits by the abrogation of the order of March 9, 1860.

7. That the documents were not sufficiently authenticated.

8. That upon the whole case, the petition ought to be dismissed.

45 In the Court of Claims, June 21st, 1866.

WILLIAM S. GRANT
vs.
THE UNITED STATES.

Ordered, that the appeal in the above named case be allowed, and that it be certified with such alterations and modifications of the petition for the same as are filed by the court.

By the court.

46 In the Court of Claims.

WILLIAM S. GRANT
vs.
THE UNITED STATES. } No. 1,882.

I, Saml. H. Huntington, chief clerk of the Court of Claims, do hereby certify that the foregoing is a true transcript of the proceedings in the above entitled case, and of the judgment of the court thereon, and of the petition of the claimant for the allowance of an appeal, filed within ninety days after the rendition of judgment in the case, and of the alterations and modifications of, and additions to the points decided and alleged for error as certified by the court, and of the order of the court allowing said appeal.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this 4th day of July, A. D. 1866.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

Attest:

JOS. CASEY.
Ch. J. Ct. of Cl.